

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

EUGENE TRUNDY,)	
)	
Petitioner)	
)	
v.)	Civil No. 97-160-B
)	
JEFFREY MERRILL, WARDEN,)	
MAINE DEPARTMENT OF)	
CORRECTIONS)	
)	
Respondent)	

**RECOMMENDED DECISION TO DENY
PETITION FOR WRIT OF HABEAS CORPUS**

The petitioner, Eugene Trundy, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (1994 & Supp. 1997), and also has filed applications to proceed *in forma pauperis* and for the appointment of counsel, following his convictions in the Maine Superior Court (Kennebec County) on May 30, 1991, and on February 23, 1989, on two counts of rape, two counts of gross sexual misconduct, and one count of unlawful sexual contact. Trundy has filed at least two prior petitions for writs of habeas corpus, in May of 1996 (Docket No. 96-117-B) and in April of 1991 (Docket No. 91-325-P-C), both of which were denied. He again attempts to challenge his convictions on the same grounds. Having carefully reviewed the evidence, the Court recommends that the petition be denied without a hearing because it is barred by the applicable statute of limitations and by the prohibition on successive petitions as set forth in the recent amendments to habeas corpus law.

Statute of Limitations

The Court first concludes that Trundy's petition is barred by the statute of limitations set forth in the recent amendments to habeas corpus law. On April 24, 1996, the President signed into law the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996). Section 101 of the Act amended 28 U.S.C. § 2244 (1994) to provide a one-year period of limitation for the filing of an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court. 28 U.S.C. § 2244(d)(1) (Supp. 1997). In the case at bar, the relevant starting dates for purposes of calculating the statute of limitations are May 30, 1991 (for Counts I-V of the original indictment), and February 23, 1989 (for Counts IX, XX, XXIII, XXIX of the original indictment), the dates on which the underlying criminal judgments "became final by the conclusion of direct review." *Id.* § 2244(d)(1)(A). The current petition in the case at bar was filed on July 21, 1997, almost fifteen months subsequent to the enactment of the new law. Even when the Court deducts the tolled periods during which Trundy pursued his state post-conviction review proceedings, the petition still must be considered to have been filed untimely under the new law. The Court thus recommends that Trundy's petition be denied without a hearing because it is barred by the statute of limitations set forth in the recent amendment to section 2254.

Successive Petitions

The Court also concludes that Trundy's petition may be denied without a hearing in view of the recent amendment to habeas corpus law requiring the Court to dismiss a state prisoner's claims in a successive petition that were presented in a prior petition. 28 U.S.C. § 2244(b)(1) (Supp. 1997). The Court's review of Trundy's current petition discloses that all of the claims presented therein were presented in one form or another in his prior petitions. To the extent that it may be argued that such claims were not formally presented in a prior petition, the Court concludes that the current petition

should be denied nonetheless because Trundy has failed to show that: (1) the claims rely on a new rule of constitutional law; (2) the factual predicates for the claims could not have been discoverable previously; or (3) the facts underlying the claim would, if proven and viewed in light of the evidence as a whole, be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found him guilty of the underlying offense. *Id.* § 2244(b)(2). In any event, a recent amendment requires that before a successive application is filed in this Court, the applicant must move in the First Circuit Court of Appeals for an order authorizing this Court to consider the application. *Id.* § 2244(b)(3)(A). Accordingly, the Court recommends that Trundy's petition be denied because it raises claims previously presented or, in the alternative, because it raises, for the first time, claims that fail to satisfy one of the above exceptions to the recent amendments to habeas corpus law.

Conclusion

For the foregoing reasons, I hereby recommend that the Court **DENY WITHOUT AN EVIDENTIARY HEARING** the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 because it was filed untimely and because it is a successive petition advancing claims already presented. I also recommend that the petitioner's applications to proceed *in forma pauperis* and for the appointment of counsel be **DENIED AS MOOT**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated this 22nd day of July, 1997.